

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF NEW MEXICO**

ROBIN G. THORNTON,  
on behalf of herself and others  
similarly situated,

Plaintiff,

v.

No. 1:20-cv-1040 JB/LF

THE KROGER COMPANY,  
ALBERTSONS,

Defendants.

**UNOPPOSED MOTION OF DEFENDANTS TO CONSOLIDATE BRIEFING ON**  
**MOTION TO DISMISS, EXTEND PAGE LIMITS, AND ESTABLISH BRIEFING**  
**SCHEDULE**

COMES NOW Defendants The Kroger Co. (“Kroger”) and Albertson’s LLC (“Albertson’s”) (collectively, “Defendants”) by and through their attorneys of record, and pursuant to D.N.M.LR-Civ. 7.2, hereby submit their Unopposed Motion to Consolidate Briefing on Motion to Dismiss, Extend Page Limits, and Establish Briefing Schedule, as follows:

1. Plaintiff Robin G. Thornton (“Plaintiff”) commenced this action by filing a Complaint on September 3, 2020, in the Second Judicial District Court for the State of New Mexico, in and for the County of Bernalillo, styled *Robin G. Thornton v. The Kroger Company, et al.*, Case No. D-202-CV-2020-05018.

2. Plaintiff’s Complaint asserts claims regarding Defendants advertising of beef products. (*See, e.g.*, Compl., ¶ 5.) Defendants own and operate grocery stores throughout the United States. (*Id.*, ¶¶ 14-16.) Plaintiff alleges that Defendants deceptively advertise imported beef or beef derived from imported cattle as products of the United States. (*Id.*, ¶¶ 5-6, 19-21.) Plaintiff brings three claims against Defendants: (1) violation of the New Mexico Unfair Practices

Act, NMSA 1978, §§ 57-12-1, *et seq.* (“UPA”) on behalf of herself and a “New Mexico Sub-Class,” (2) breach of express warranty on behalf of herself and a national class, and (3) unjust enrichment on behalf of herself and a national class. (*Id.*, ¶¶ 48-69.)

3. On October 8, 2020, Defendants filed their Joint Notice of Removal, removing Plaintiff’s lawsuit to this Court. As more fully described in the Joint Notice of Removal, this removal was based on the provisions of the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1332(d), diversity jurisdiction pursuant to 28 U.S.C. § 1332(a)(1), and federal question jurisdiction pursuant to 28 U.S.C. § 1331.

4. Defendants plan to move to dismiss Plaintiff’s claims. Plaintiff and Defendants (collectively, the “Parties”) have agreed, in the interest of judicial economy, that Defendants should consolidate briefing and file a single Motion to Dismiss.

5. The Parties have also agreed to a briefing schedule that will accommodate the needs of each of the Parties to this action. Specifically, the Motion to Dismiss will be due on November 13, 2020. Plaintiff’s Response to the Motion to Dismiss will be due on December 31, 2020. Defendants’ Reply in Support of the Motion to Dismiss will be due on January 28, 2021.

6. In addition, the parties have agreed to extend the page limits set forth in D.N.M.LR-Civ. 7.5 to allow the Motion to be filed up to thirty-five (35) double-spaced pages in length, the Response to be filed up to thirty-five (35) double-spaced pages in length, and the Reply to be filed up to twenty-five (25) double-spaced pages in length.

7. In accordance with the requirement of D.N.M.LR-Civ. 7.1, the undersigned have sought concurrence in this Motion from Plaintiff’s counsel. Plaintiff does not oppose this Motion. As a result, in accordance with the requirements of D.N.M.LR-Civ. 7.2, a proposed order approved by each party will be submitted to the Court concurrently with the filing of this Unopposed Motion.

**WHEREFORE,** Defendants Kroger and Albertson's respectfully request the Court enter their proposed Order allowing Defendants to consolidate their briefing and file a single Motion to Dismiss in this matter, adopt the briefing schedule proposed by the Parties, and allow for an extension of the page limits in connection with the Motion to Dismiss briefing.

Respectfully submitted,

/s/ Monica R. Garcia

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*Counsel for Defendants,*

*The Kroger Co. and Albertson's LLC*

I HEREBY CERTIFY that on the 16<sup>th</sup> day of October 2020, I filed the foregoing electronically through the CM/ECF system, which caused all counsel of record to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

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